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June 13, 2022

**VIA ECF**

The Honorable Cheryl L. Pollak  
United States Magistrate Judge  
Eastern District of New York  
225 Cadman Plaza East, Room 1230  
Brooklyn, New York 11201

Re: Marin, et al. v. Apple-Metro, Inc., et al., No. 12 Civ. 5274 (E.D.N.Y.)  
Dove, et al. v. Apple-Metro, Inc., et al., No. 13 Civ. 1417 (E.D.N.Y.)

Dear Judge Pollak:

We represent Defendants in the above matters.<sup>1</sup> We write in furtherance of our letter, dated May 16, 2022, to provide the Court with a status report on discovery and request an extension of deadlines. Plaintiffs join in this report and request for extension.

After extended negotiations, the parties appear to have reached an agreement on unstructured ESI and opt-in discovery. The parties have a dispute concerning structured ESI, which is the subject of the letters filed with the Court at Marin Dkt. Nos. 355, 357, and 360.

Regarding unstructured ESI (i.e. email communications), Defendants are in the process of processing and reviewing documents that contain mutually agreed-upon search terms, and will perform a simultaneous review of a validation set of documents. Defendants anticipate this review and production to Plaintiffs should be complete by mid-July 2022.

Regarding opt-in discovery, the parties agreed that for purposes of the discovery contemplated by the current schedule (Marin Dkt. No. 348):

- a. On or before June 13, 2022, Defendants will provide Plaintiffs with a list of up to 50 Opt-in Plaintiffs selected from among the *Dove* and *Marin* collectives.
- b. Plaintiffs' counsel shall make diligent efforts to collect discovery responses from the 50 Opt-in Plaintiffs selected by Defendants. Discovery requests shall be considered served on the date on which Plaintiffs' counsel receives the list described in paragraph a.
- c. If Plaintiffs' counsel are unsuccessful in their efforts to obtain discovery responses from any of the Opt-in Plaintiffs on Defendants' proposed list as of two weeks

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<sup>1</sup> Except individually named Defendant, Samlal.

following service of the list, Plaintiffs' counsel will so notify Defendants, including the reason why Plaintiffs were unsuccessful in their efforts – e.g., the Opt-in Plaintiff could not be located after multiple attempts to locate them, the Opt-in Plaintiff is refusing to respond to the discovery, etc.

- d. Defendants may select additional names to substitute for anyone identified by Plaintiffs' counsel pursuant to paragraph c, on a one-to-one basis, within five (5) business days following receipt of such notice. Discovery requests shall be considered served on those additional individuals on the date on which Plaintiffs' counsel receives the substitute names.
- e. Plaintiffs' counsel will again notify Defendants of any inability to obtain discovery responses from Opt-in Plaintiffs within two weeks following receipt of the second list of names pursuant to paragraph d. The same processes set forth in paragraphs c and d (above) will be utilized until the parties have completed three rounds.
- f. Plaintiffs' counsel and Defendants' counsel will meet and confer regarding the need for additional opt-in discovery if the three rounds described above do not result in written discovery responses from at least fifty (50) opt-in Plaintiffs by August 31, 2022. Plaintiffs reserve their right to object to any further discovery after the three rounds described above. Defendants reserve their right to request discovery responses from at least fifty (50) opt-in Plaintiffs. The parties will work in good faith to meet and confer regarding any discovery disputes concerning outstanding opt-in written discovery.

The current deadline for the parties to (1) exchange opt-in lists for purposes of depositions, (2) exchange supplemental Rule 26 disclosures, (3) to bring motions regarding written discovery related to anticipated depositions, and (4) to produce ESI is June 15, 2022. Given the process agreed to by the parties outlined above, and the time anticipated to complete these tasks, the parties propose and respectfully request the following extension of the current deadlines:

- July 22, 2022 – Deadline for Defendants to produce unstructured ESI.
- September 9, 2022 – Deadline for the parties to bring motions regarding written discovery related to anticipated depositions of opt-in plaintiffs.
- September 16, 2022 – Deadline for the parties to exchange opt-in lists for purposes of depositions and exchange supplemental Rule 26 disclosures. If Plaintiffs identify an opt-in to be deposed from whom Defendants have not previously received written discovery responses, Defendants may serve written discovery on said opt-in Plaintiff prior to the opt-in Plaintiff's deposition.

It appears likely that this process will require an extension of the December 23, 2022 deadline to complete depositions. For this reason, Plaintiffs are of the view that the procedures above should be memorialized in a written stipulation that is so-ordered by the Court, to ensure that the processes remain on track and do not further delay the progress of the case. Defendants' position is that parties are not required under the federal or local rules to enter into a written stipulation so-ordered

by the Court, and that the parties' obligations under Rules 26 and 34 are self-executing (authorities can be provided upon request). The parties will continue to confer about the time needed to complete depositions, and may approach the Court at a later date for an extension of that deadline if the circumstances so warrant.

The parties also respectfully request that the Court order that the parties may extend or otherwise alter the deadlines set forth herein by mutual agreement, or any of the other processes described herein, without need for approval by the Court, with the exception of the deposition deadline, which would require Court approval.

Respectfully submitted,

*/s/ Jessica F. Pizzutelli*

Jessica F. Pizzutelli

cc: All Counsel of Record (Via ECF)

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